

STATE OF MICHIGAN  
COURT OF APPEALS

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COMMERCE LAKE DEVELOPMENT, INC.,

Plaintiff-Appellant,

V

CHARTER TOWNSHIP OF COMMERCE,

Defendant-Appellee.

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UNPUBLISHED

November 27, 2001

No. 223425

Oakland Circuit Court

LC No. 98-005650-AA

Before: Zahra, P.J., and Hood and Murphy, JJ.

PER CURIAM.

Plaintiff appeals by leave granted an order entered by the circuit court affirming defendant's planning commission's denial of plaintiff's application to amend a previously approved site plan. Under the proposed amended site plan, plaintiff sought to construct two additional condominium units in a development which already included thirty-two units constructed pursuant to a site plan approved in 1992 and an amended site plan approved in 1993. We reverse and remand.

If a planning commission's decision is supported by competent, material, and substantial evidence on the record, is procedurally proper, is a reasonable exercise of the commission's discretion, and complies with the constitution and laws of the state, the decision should be affirmed. MCL 125.293a(1); *Macenas v Village of Michiana*, 433 Mich 380, 395; 446 NW2d 102 (1989). However, a reviewing court should decide questions of law and negate actions that are so unreasonable as to rise to the level of unconstitutionality. *Id.*

Plaintiff argues that the circuit court erred in finding that the planning commission had legal authority to compel plaintiff to permanently dedicate private property as a park. Plaintiff's argument lacks merit. A review of the record indicates that the trial court made no such finding, nor did the planning commission compel plaintiff to permanently dedicate private property as a park. The circuit court merely ruled that the planning commission acted properly in refusing to allow plaintiff to construct two new condominium units in an area designated as a nature park under an earlier site plan.

Plaintiff next argues that the circuit court erred in finding that the proposed amended site plan requesting the addition of two condominium units was inconsistent with the 1993 approved site plan. The trial court relied on MCL 125.286e(3), which provides:

If a zoning ordinance requires site plan approval, the site plan, as approved, shall become part of the record of approval, and subsequent actions relating to the activity authorized shall be consistent with the approved site plan, unless a change conforming to the zoning ordinance receives the mutual agreement of the landowner and the individual or body which initially approved the site plan.

MCL 125.286e(3) is not relevant here because plaintiff submitted a new amended site plan for approval. The relevant inquiry should have focused on MCL 125.286e(5) and Charter Township of Commerce Ordinance, § 2014(6). MCL 125.286e(5) provides:

A site plan **shall be approved** if it contains the information required by the zoning ordinance and is in compliance with the zoning ordinance and the conditions imposed pursuant to the ordinance, other township planning documents, other applicable ordinances, and state and federal statutes. [Emphasis added.]

Section 2014(6) of defendant's ordinances provides:

Approval. **All site plans shall be approved** by the Planning Commission after compliance with the requirements of this Ordinance, except the Zoning Administrator and Planning Director may, unless it appears necessary to insure compliance with this Ordinance, approve without submittal to the Planning Commission any site plan involving alterations, modifications, improvements and additions to existing structures. The Planning Commission may waive required site plan items, which, if in the opinion of the Commission, are not necessary to achieve the objectives of this Section and this Ordinance. Upon approval of the site plan, an application for a Building Permit shall be made by the petitioner in accordance with the provisions of Article XXII of this Ordinance. [Emphasis added.]

In light of these provisions, the inquiry required to be undertaken by the planning commission was to determine whether the proposed amended site plan complied with township ordinances, and state and federal statutes.

Although plaintiff has framed a number of issues on appeal, plaintiff's argument, at its core, is premised on the planning commission's failure to properly apply its own ordinances, and to make findings pursuant to those ordinances, pertaining to site plan approval. Therefore, we believe that it is proper to consider plaintiff's argument in the context of the applicable tests for appellate review found in MCL 125.293a(1) as cited above.

In the circuit court's opinion and order on plaintiff's motion for reconsideration, the court noted that it accepted the planning commission's findings "that replacing the nature park with two additional condominiums would affect the harmonious relationship between future and existing development, have an injurious effect on existing development and surrounding property owners[,] and compromise the rear-yard privacy of existing units."

The record indicates that the planning commission never made such specific findings. The only documented reason for the planning commission's denial of plaintiff's proposal for another amendment to the site plan was given in the meeting minutes as "the developer is not following the site plan presented to the Commission and the addition of the lots does not enhance the existing subdivision and further, the nature area should benefit the residents and not the developer." We hold that these findings are insufficient for purposes of appellate review. In *Reenders v Parker*, 217 Mich App 373, 378; 551 NW2d 474 (1996), this Court stated that meaningful judicial review of whether there was competent, material, and substantial evidence on the record to support a zoning decision requires a knowledge of the facts justifying a board's conclusion. The planning commission's findings are conclusory without any factual detail.

We express no opinion as to the merits of the planning commission's ultimate decision. We merely conclude that the record developed by the planning commission is inadequate to allow a reviewing court to determine whether the commission's decision was supported by competent, material, and substantial evidence, and whether it was an exercise of reasonable discretion as required by MCL 125.293a. Because the record was inadequate to allow judicial review, and since the trial court's reliance on MCL 125.286e(3) was misplaced, consistent with MCL 125.293a(2), we remand this matter to the planning commission for further proceedings and a fuller explanation of the facts and reasoning for whatever decision it makes on plaintiff's amended application. However, the planning commission, in rendering its findings, must focus on whether the proposed amended plan complies with township ordinances, and state and federal law, not whether it is consistent or inconsistent with previously approved site plans.

Reversed and remanded. We do not retain jurisdiction.

/s/ Brian K. Zahra

/s/ Harold Hood

/s/ William B. Murphy